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LUCIANA BAKER Plaintiff, Vs. THE HARTFORD LIFE INSURANCE COMPANY, and BLOOMBERG, LP – NEW YORK, ADMINISTRATOR OF THE BLOOMBERG LP LONG-TERM DISABILITY PLAN Defendant,	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY CIVIL ACTION NO. 08-cv-6382 (FLW)

STATEMENT OF UNCONTESTED MATERIAL FACTS

1. Luciana Baker ("Ms. Baker") is an individual residing at 305 Martin Road, Princeton, New Jersey 08540.

2. Ms. Baker is a participant in a Group Long Term Disability Insurance Policy ("Policy") issued by The Hartford Life Insurance Company to Ms. Baker's former employer, Bloomberg, L.P., under Group Policy #83171440. The referenced Long Term Disability Plan at all times pertinent hereto was maintained and sponsored by Bloomberg,

L.P. – New York ("Bloomberg") and was underwritten by The Hartford Life Insurance Company ("Hartford"). (TJH Certif. Exhibit 1)

3. For purposes of coverage under the Policy Ms. Baker is considered disabled if, during the Elimination Period and the following 24 months, Injury or Sickness causes physical or mental impairment to such a degree of severity that she is (1) continuously unable to perform the Material and Substantial Duties of Your Regular Occupation; and (2) not Gainfully Employed. (TJH Certif. Exhibit 1)

4. The Plan defines "Material and Substantial Duties" as those duties which are described as the necessary functions of Your Regular Occupation which cannot be reasonably omitted or altered. (TJH Certif. Exhibit 1)

5. The Plan/Policy defines "Regular Occupation" as the occupation that You are performing for income or wages on Your Date of Disability. (TJH Certif. Exhibit 1)

6. Hartford both determines claims and pays funds to beneficiaries out of its own assets. (TJH Certif. Exhibit 2, Interrogatories 4 and 5)

7. As of December, 2007 Ms. Baker was employed as a news producer/editor for Bloomberg News and, while so employed, held primarily a desk based position. Her work consisted of writing and editing financial reports. (TJH Certif. Exhibit 3)

8. As a news producer/editor for Bloomberg News Ms. Baker's assignments *required* prolonged sitting for hours **without intermission**. This prolonged sitting was necessitated by long telephone conferences and by financial market events concerning which Ms. Baker was required to promptly write for publication and/or for live transmission to Bloomberg customers worldwide on their computer terminals. (TJH Certif. Exhibit 3)

9. On February 5, 2007 Ms. Baker became unable to continuously perform the material and substantial duties of her job as a Bloomberg news producer/editor due to severe lower back pain and other major medical complications of spinal surgery that had been performed in April, 2001. (TJH Certif. Exhibit 3)

10. Ms. Baker's symptoms included not only chronic severe low back pain, but marked vascular insufficiency of the arteries in both legs, as well as a neurogenic bladder. (TJH Certif. Exhibit 3, 5, 7 and 8)

11. As of February 12, 2007 on the recommendation of her doctors, Ms. Baker stopped working and applied for long-term disability benefits.

12. Ms. Baker became eligible for long-term disability benefits in August, 2007 after the expiration of a 180 day elimination period. (TJH Certif. Exhibit 1)

13. Ms. Baker submitted a claim for long-term disability benefits dated August 22, 2007 ("initial claim"). (TJH Certif. Exhibit 3)

14. In the initial claim Ms. Baker (a) explained that she was not able to sit for any appreciable period of time and that after approximately 20 minutes her lower extremities became numb, tingling and cold; and (b) Ms. Baker's symptoms improved significantly when she was able to minimize sitting while away from work. (TJH Certif. Exhibit 3)

15. In support of her initial claim, Ms. Baker's employer, Bloomberg, submitted a "Physical Demands Analysis" form which indicated that Ms. Baker's job required to her sit 7 hours per day using a computer, telephone and headset. (TJH Certif. Exhibit 4)

16. In support of her claim, Ms. Baker submitted a report from her primary treating doctor, Paul M. Cooke, M.D. which indicated among other things, that an MRI from February 7, 2007 showed disc bulging at L4-L5 and L5-S1 with L4-L5 annular tear with high intensity zone. There was abutment of bilateral L5 nerve roots in the lateral recesses at the L4-L5 level. In his report of April 17, 2007, Dr. Cooke opined that "I feel that returning to work at this time with the inherent sitting required for her position, would be a significant impediment to that progress. Therefore, I recommend that she remain out of work for up to another three months in order to fully take advantage of the strengthening and stabilization exercise program. Hopefully, at that time, if not sooner, her lumbar spine stabilizing muscles will be stronger and have greater functional activity endurance. Hopefully, at that time, we can start to get her back to work, likely initially in a modified capacity." (TJH Certif. Exhibit 5)

17. In his report of April 17, 2007, Dr. Cooke further wrote that "For now, she will continue to limit prolonged sitting…" (TJH Certif. Exhibit 5)

18. Also in support of her initial claim Plaintiff submitted a report from a treating physician, Dr. Cooke, dated July 12, 2007 which stated, in pertinent part, the following:

> "With the perspective of having treated her throughout those years with that pain as well as seeing her now, much more functional and relatively pain free, I therefore feel that it is not medically advisable for her to return to work in her previous position, which does require prolonged sitting. If there is no other employment option that would not require that degree of sitting, then she should proceed with looking into long-term disability."

(TJH Certif. Exhibit 6)

19. After review of Dr. Cooke's letter of July 12, 2007 Hartford responded with a letter to Dr. Cooke dated August 7, 2007 acknowledging that "you recommended

that she not return to her previous position which requires prolonged sitting, and if there is not other employment options that would reduce the degree of sitting, you recommended proceeding with long-term disability." (TJH Certif. Exhibit 6, 7)

20. In further support of the long-term disability claim, Ms. Baker submitted another report dated August 28, 2007 from Dr. Cooke, which stated unequivocally that the treatment plan included the minimization of sitting duration. (TJH Certif. Exhibit 8)

21. Hartford issued a letter dated September 14, 2007 denying Ms. Baker's claim for long-term disability benefits stating, in pertinent part, that Hartford "concluded from the combination of all the medical information in your file that you are able to perform the Essential Duties of Your Occupation which falls in the sedentary category of work." (TJH Certif. Exhibit 9)

22. Hartford did not consult a neurologist before denying Ms. Baker's initial claim. (TJH Certif. Exhibit 16, Request for Admissions #4)

23. Ms. Baker filed an appeal of the initial denial of her claim for long-term disability benefits in January, 2008. (TJH Certif. Exhibit 10)

24. The January, 2008 appeal included an Attending Physician's Statement of Dr. Cooke dated August 28, 2007; medical consultation notes of Dr. Gary A. Fantini of the Cornell University College of Medicine dated February 21, 2006 and September 21, 2007; a medical report of Dr. Keyan Ma dated September 25, 2007; a medical report of Dr. Busono dated September 28, 2007; a medical report of Dr. Natalia Dashevesky dated October 9, 2007; a medical report of Dr. Marc I. Schwartsman dated October 16, 2007; and a medical report of Dr. Wang Chung Hesui dated October 21, 2007. (TJH Certif. Exhibit 10)

25. The January, 2008 appeal explained that Ms. Baker had been advised by numerous physicians not to sit for longer than one half hour at a time or stand for longer than one hour at a time during a normal 8 hour work day. (TJH Certif. Exhibit 10)

26. The January, 2008 appeal further explained that prolonged sitting exacerbated Ms. Baker's urinary/bladder problems as well as her vascular symptoms. (TJH Certif. Exhibit 10)

27. In support of her appeal, Ms. Baker submitted a letter by Dr. Hsueh dated October 21, 2007 describing the treatment rendered to Ms. Baker since August, 2002, and also containing the unequivocal statement that the Ms. Baker was "unable to perform any type of sedentary work as the sitting for standing for prolonged periods of time exacerbate her medical problems." The report of Dr. Hsueh of October 21, 2007 recommended that Ms. Baker "go on long-term disability." (TJH Certif. Exhibit 10)

28. In further support of her appeal Ms. Baker submitted a report from Dr. Keyan Ma, M.D. dated September 25, 2007 referencing a February 7, 2007 MRI of the lumbar spine showing mild degenerative bulging discs at L4-5 and L5-S1 with small annular fissures; mild bilateral L4-5 subarticular recess stenosis; as well as L2-3 through L5-S1 facet arthrosis. The report of Dr. Ma of September 25, 2007 also referenced an MRI of February 16, 2007 showing bilateral L4-L5-S1 radiculopathy. (TJH Certif. Exhibit 10)

29. In his report of September 25, 2007 Dr. Ma indicated that he again saw Ms. Baker on September 21, 2007 and gave the following recommendation: "Patient is a journalist who has to stay sedentarily during the work. She is unable to perform the

work duty under her medical conditions. She is strongly recommended for long-term disability." (TJH Certif. Exhibit 10)

30. In support of his recommendation, Dr. Ma referenced the following diagnostic studies: "MRI of lumbar spine (taken on 02/07/2007): ***Mild degenerative bulging discs at L4-5 and L5-S1 with small annular fissures. Mild bilateral L4-5 sub-articular recess stenosis. Very mild L2-3 through L5-S1 facet arthrosis.*** EMG of Lower Extremity (taken on 02/16/2007): ***Bilateral L4-5 and L5-S1 radiculopathy."*** (TJH Certif. Exhibit 10)

31. In support of her appeal Ms. Baker supplied a report dated October 16, 2007 from Marc Schwarzman, M.D., specializing in urology. (TJH Certif. Exhibit 10)

32. In his report, Dr. Schwarzman referenced an October 16, 2007 consultation which related the complications of her 2001 lower back surgery. (TJH Certif. Exhibit 10)

33. In his October 16, 2007 report Dr. Schwarzman related that "in late September, 2007 she had an episode of severe urinary hesitancy and a trickling, bloody urinary stream." (TJH Certif. Exhibit 10)

34. In further support of her appeal Ms. Baker submitted a medical report from Dr. Nataliya Dashevsky, M.D. dated October 9, 2007 stating that Ms. Baker was suffering from the complications of spinal surgery performed in 2001 which included a neurogenic bladder characterized by frequent bouts of urinary retention and urinary tract infections. The report of Dr. Dashevsky dated October 9, 2007 stated that the urinary symptoms were exacerbated by sitting for long periods of time. The report of Dr. Dashevsky of October 9, 2007 further stated that Ms. Baker had a history of vascular

insufficiency of the arteries in both legs which symptoms were also neurogenic and also due to prolonged sitting. (TJH Certif. Exhibit 10)

35. In further support of her appeal Ms. Baker submitted a medical report from Princeton and Rutgers Neurology PA referencing her examination concerning her neurogenic bladder. In the Princeton and Rutgers Neurology Report of September 28, 2007 Dr. Busono relates that "For about a week, she has been experiencing difficulty in urination as well as blood in the urine." Dr. Busono further wrote that "The differential must include neurogenic bladder and *cauda equina* syndrome. She needs to go to the hospital but she insisted on going to see her primary physician first." (TJH Certif. Exhibit 10)

36. In further support of her appeal Ms. Baker submitted a report from Dr. Gary A. Fantini, Clinical Associate Professor of Surgery, Weill Medical College of Cornell University specializing in vascular surgery and the consultative practice of vascular medicine. (TJH Certif. Exhibit 10)

37. The report of Dr. Fantini indicates that Ms. Baker consulted him with a chief complaint of "bilateral foot discoloration." The history of the illness was occasional bluish discoloration of the feet. (TJH Certif. Exhibit 10)

38. In his consultation report Dr. Fantini states that "Noteworthy is that she underwent micro discectomy for HNP at L5-S1 in 2001, with some benefit. She does stand frequently during her workday, as sitting is her worst position for her lower back." (TJH Certif. Exhibit 10)

39. In his consultation report, Dr. Fantini indicated that Ms. Baker "should continue to ambulate as much as possible, and she should pursue her regular exercise program." (TJH Certif. Exhibit 10)

40. In further support of her appeal Ms. Baker submitted a photograph of her work station as well as a description of her job duties and the reasons why she was unable to perform the job. In the description of her job duties submitted with her appeal Ms. Baker explained that only after 10-15 minutes of sitting she needed to find a way to raise her legs but that the job station did not allow for that accommodation. (TJH Certif. Exhibit 11)

41. In her appeal Ms. Baker explained that she was unable to perform her job by either raising her legs, or getting up and walking around on a regular basis because there were numerous programs on her personal computer that she needed to utilize on a regular basis during the day in order to write and edit financial reports. (TJH Certif. Exhibit 11)

42. In the very detailed job description which Ms. Baker submitted in order to explain why she could not perform the material and substantial duties of her job, Ms. Baker wrote that on a regular basis she needed to utilize the Bloomberg terminal with four essential screens; multiple telephones; broadcasting equipment needed to monitor the audio transmission of live events, conference calls, press releases and the like; a television needed to cue the beginning and ending of events and interviews. Ms. Baker further explained that when she experienced back spasms she could not urinate normally and that even though she attempted to work by alternating between sitting, standing and kneeling, her health problems became aggravated significantly. (TJH Certif. Exhibit 11)

43. In the appeal dated January 17, 2008, Hartford was informed that Ms. Baker's employer made certain modifications in her work station in an effort to accommodate her multiple disabilities but "These accommodations proved ineffective since Ms. Baker was denied the opportunity to sit or stand as required during her work day by her supervisor." (TJH Certif. Exhibit 11)

44. Subsequent to the January 17, 2008 appeal, Hartford never contacted Ms. Baker's employer in order to question or clarify the statement that she was unable to work with accommodations as set forth in the appeal.

45. The January, 2008 appeal was denied by letter dated March 17, 2008. (TJH Certif. Exhibit 12)

46. In its appeal denial letter of March 17, 2008, Hartford did not dispute the fact that prolonged sitting caused Ms. Baker to suffer bladder/urinary complications.

47. In its appeal denial letter of March 17, 2008, Hartford did not dispute the fact that prolonged sitting complicated Ms. Baker's lower extremity vascular complications.

48. The March 17, 2008 denial was primarily based upon a "Peer Review Report" prepared by a Dr. Nemunaitis of MES Solutions dated February 26, 2008 which contained multiple mistakes. (TJH Certif. Exhibit 13)

49. Dr. Nemunaitis neither practices neurology nor urology as a specialty, nor has he ever been Board certified in either neurology, or urology. His last Board certification was in 1968 in the field of physical medicine and rehabilitation. He appears to have been involved only in peer review type activities for almost the last twenty years. (TJH Certif. Exhibit 14)

50. The Peer Review Report of February 26, 2008 incorrectly stated that Ms. Baker was employed as a reporter. (TJH Certif. Exhibit 14)

51. The Peer Review Report of February 26, 2008 also indicated that Dr. Nemunaitis called Dr. Ma, which was incorrect. (TJH Certif. Exhibit 14)

52. The Peer Review Report of February 26, 2008 erroneously indicated that the records supplied indicated that Dr. Ma's treatment did not begin until September 21, 2007, even though the records of Dr. Ma which had been supplied indicated that Ms. Baker had been under his medical care since December, 2005. (TJH Certif. Exhibit 14)

53. The Peer Review report of Dr. Nemunaitis erroneously referred to Dr. Natalia Dashevsky as a man. (TJH Certif. Exhibit 14)

54. The Peer Review report of Dr. Nemunaitis of February 26, 2008 erroneously indicated that Dr. Dashevsky was a neurologist when in fact, she was Ms. Baker's primary treating physician. (TJH Certif. Exhibit 14)

55. The Peer Review report of Dr. Nemunaitis erroneously indicated that Ms. Baker, who was 44 years old, was 42 years old. (TJH Certif. Exhibit 14)

56. The February 26, 2008 Peer Review report of Dr. Nemunaitis erroneously stated that Ms. Baker's job could be performed as she was, "allowed to get up and walk around frequently," which it did not. (TJH Certif. Exhibit 14)

57. The February 26, 2008 Peer Review report of Dr. Nemunaitis misstated that "Dr. Cooke felt that perhaps her job could be modified to meet her [Plaintiff's] needs." Dr. Cooke never made any such recommendation. Rather, he merely stated that encouraged Ms. Baker to discuss ***possible*** accommodations with Bloomberg. (TJH Certif. Exhibit 5 and 14)

58. The February 26, 2008 Peer Review report of Dr. Nemunaitis erroneously stated that "there were no restrictions/limitations associated with the claimant's comorbid conditions that included venus insufficiency and urinary retention," when, in fact, multiple treating physicians associated those complications with prolonged sitting. (TJH Certif. Exhibit 14)

59. In his report Dr. Nemunaitis erroneously stated that there was no objective medical support for a sitting restriction of 30 minutes because the opinions of Ms. Baker's treating doctors were "primarily based on self-reported findings." In fact, Dr. Fantini observed phlebectomy scars, and that Ms. Baker's "Feet were cool, with a slight bluish hue…"; Dr. Dashevsky noted frequent bouts of urinary tract infections; Dr. Schwartzman noted that an October 4, 2007 uroflowmetry showed an interrupted urinary stream and both Dr. Ma and Dr. Cooke made reference to the lumbar spine MRI's as well as the lower extremity EMG showing bilateral L4 L5 S1 radiculopathy. (TJH Certif. Exhibit 14)

60. Although Dr. Nemunaitis in his report did reference telephone contact with Dr. Dashevsky, he failed to include in his report the fact that Dr. Dashevsky had informed him that Ms. Baker was suffering from the neurologic consequences of the previous spinal surgery which included intermittent autonomic nervous system dysfunction caused by a scarring of the *cauda ecquina*. Dr. Nemunaitis omitted that in his telephone conversation with Dr. Dashevsky she explained that Ms. Baker's systems manifested themselves as arterial spasms effecting both legs from the thigh down, almost leading to ischemic gangrene and neurogenic bladder with resulting urinary retention

leading to periodic pyelonephritis. (TJH Certif. Exhibits 14 and Declaration of Dr. Dashevsky Exhibit 15)

61. Dr. Nemunaitis also omitted that Dr. Dashevsky clearly informed him that both the arterial spasm and the neurogenic bladder were exacerbated by prolonged sitting, and that sitting for long periods of time leaves Ms. Baker vulnerable to bilateral leg amputation and urinary sepsis and that she was, therefore, deemed totally disabled from her occupation. (TJH Certif. Exhibit 14 and Declaration of Dr. Dashevsky Exhibit 15)

62. The denial letter of March 17, 2008 does not address Ms. Baker's claim that her symptoms included a neurogenic bladder with resulting urinary retention leading to periodic pyelonephritis. (TJH Certif. Exhibit 12)

63. The denial letter of March 17, 2008 does not address Ms. Baker's claim that sitting for long periods of time leaves her vulnerable to bilateral leg amputation. (TJH Certif. Exhibit 12)

64. The denial letter of March 17, 2008 does not address Ms. Baker's claim that sitting for long periods of time leaves her vulnerable to urinary sepsis. (TJH Certif. Exhibit 12)

65. In its determination of Ms. Baker's claim, including her appeal of the initial denial of her claim, Hartford did not consult a neurologist or urologist. (TJH Certif. Exhibit 12 and Request for Admissions #4 Exhibit 16)

66. In its determination of Ms. Baker's claim, including her appeal of the initial denial of her claim, Hartford did not consult a physician board certified in neurology. (TJH Certif. Exhibit 12 and Request for Admissions #5 Exhibit 16)

67. In reviewing and determining the administrative appeal filed on behalf of the Ms. Baker dated January 17, 2008, Hartford did not consult Ms. Baker's employer. (TJH Certif. Exhibit 12 and Exhibit 17)

68. The claims notes of the Hartford representative involved in the determination of the appeal acknowledged that Ms. Baker's job required sitting up to 7 hours per day. However, the notes misstate that Ms. Baker had "the flexibility of sitting/standing as needed." Ms. Baker had previously made it clear that she could not perform her job while standing. Moreover, prolonged standing exacerbates her vascular problems. Moreover, the statements supplied by her employer stated that Ms. Baker needed to work in the sitting position 7 hours per day. (Exhibit 17)

69. Also in support of her claim Ms. Baker provided detailed information concerning her neck injury. Neither the initial denial letter on the part of Hartford nor the appeal denial letter, addressed her neck injury. (Exhibit 18)

70. Cauda Equina Syndrome ("CES") is a serious neurologic condition in which there is acute loss of function of the neurologic elements (nerve roots) of the spinal canal below the termination (conus) of the spinal cord. (TJH Certif. Exhibit 15)

71. The signs of CES include weakness of the muscles innervated by the compressed roots causing urinary retention and post-void residual incontinence. (TJH Certif. Exhibit 15)

72. Sepsis is a severe illness caused by overwhelming infection of the blood stream by toxin-producing bacteria. Sepsis, also called systemic inflammatory response syndrome (SIRS) is very serious and is often life threatening.

73. People with a higher degrees of risk of developing sepsis includes people who haveurinary catheters, which was prescribed to Ms. Baker for treatment of urinary retention attacks. (TJH Certif. Exhibit 15; Schwartzman Report 10-16-07)

74. In response to Plaintiff's request for copies of the notes of Dr. Nemunaitis, Hartford represented that the notes no longer existed. (TJH Certif. Exhibit 19, Document Request #12.)

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BY:___*/s/ Thomas J. Hagner*_____
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Dated: September 25, 2009